

Kevin D. Rising (211663)
Kevin.Rising@btlaw.com
BARNES & THORNBURG LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067
Telephone: (310) 284-3880
Facsimile: (310) 284-3894

Felicia J. Boyd (*Admitted Pro Hac Vice*)
felicia.boyd@btlaw.com

Aaron A. Myers (Admitted Pro Hac Vice)
aaron.myers@btlaw.com

BARNES & THORNBURG LLP
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 333-2111
Facsimile: (612) 333-6798

Attorneys for Plaintiffs
WELLS FARGO & COMPANY and
WELLS FARGO INSURANCE SERVICES,
USA, INC.

Benjamin K. Riley (112007)
briley@bztm.com

Jayne Laiprasert (256930)
jlaiprasert@bztm.com

BARTKO, ZANKEL, BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Telephone: (415) 956-1900
Facsimile: (415) 956-1152

Katherine M. Basile (132518)
katherine.basile@novakdruce.com

NOVAK DRUCE + QUIGG LLP
21771 Stevens Creek Boulevard
Cupertino, CA 95014
Telephone: (408) 414-7330
Facsimile: (408) 996-1145

James M. Wagstaffe (99535)
wagstaffe@kerrwagstaffe.com

Adrian J. Sawyer (203712)
sawyer@kerrwagstaffe.com

KERR & WAGSTAFFE LLP
100 Spear Street, 18th Floor
San Francisco, CA 94105-1576
Telephone: (415) 371-8500
Facsimile: (415) 371-0500

Attorneys for Defendants
ABD INSURANCE & FINANCIAL SERVICES,
INC., KURT DE GROSZ and
BRIAN HETHERINGTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO & COMPANY and WELLS FARGO INSURANCE SERVICES, USA, INC.,) No. CV 12-3856 (PJH)

Plaintiffs,

V.

ABD INSURANCE & FINANCIAL
SERVICES, INC.; KURT DE GROSZ; and
BRIAN HETHERINGTON,

Defendants.

No. CV 12-3856 (PJH)

**JOINT STATEMENT RE STATUS
AND REQUEST TO TAKE HEARING
OFF CALENDAR
AND ORDER**

The Hon. Phyllis J. Hamilton

Complaint Filed: July 24, 2012

1 Counsel for the parties hereby submit this joint statement re status and request that the
 2 Court take the May 21, 2014 hearing on Wells Fargo's renewed motion for preliminary injunction
 3 off calendar.

4 The Court will recall that on December 20, 2013, the Ninth Circuit issued a memorandum
 5 disposition, reversing this Court's Order denying Wells Fargo's motion for preliminary injunction,
 6 and remanding back to this Court for further consideration. The ABD Team filed a petition for
 7 panel rehearing and rehearing *en banc*, which was denied on February 6, 2014, although the panel
 8 modified its memorandum disposition to respond to one of the issues raised by the ABD Team's
 9 petition for review. The revised memorandum disposition contained an order barring any further
 10 petitions for panel rehearing or rehearing *en banc*.

11 On March 3, 2014, the Ninth Circuit issued a published Opinion, setting forth the same
 12 reasoning and holding as previously included in the memorandum disposition, and repeating the
 13 prohibition against further petitions for rehearing.

14 At the Case Management Conference before this Court on March 6, 2014, the Court and
 15 the parties set a hearing for May 21, 2014, on a renewed motion for preliminary injunction to be
 16 filed by Wells Fargo. The Court directed the parties to contact the Ninth Circuit to determine if
 17 the mandate had issued back to the district court, and requested the parties to agree on a briefing
 18 schedule for the renewed motion.

19 The next week, on March 11, 2014, the Ninth Circuit withdrew its March 3 published
 20 Opinion, and issued an identical published Opinion. It also issued a new Order specifically
 21 deleting the prohibition against further petitions for rehearing.

22 In accordance with the March 11 Order and in light of the publication of the Opinion and
 23 its precedential impact, the ABD Team filed a renewed Petition for Rehearing *En Banc* on March
 24, 2014.

25 Accordingly, this preliminary injunction issue is again before the Ninth Circuit, as it
 26 considers the renewed Petition for Rehearing *En Banc*. Therefore, the parties respectfully request
 27 that the Court take the May 21 hearing on the renewed motion for preliminary injunction off
 28 calendar. The parties and counsel will contact the Court and, as appropriate depending on the

1 Ninth Circuit's ultimate order, will work together to bring this matter efficiently back to this Court
2 after the final issuance of the mandate.

3

4 Dated: March 27, 2014

/s/ Felicia J. Boyd

5 Kevin D. Rising
BARNES & THORNBURG LLP
6 2049 Century Park East, Suite 3550
Los Angeles, CA 90067
7 Tel: (310) 284-3888
Fax: (310) 284-3894

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Felicia J. Boyd (*admitted pro hac vice*)
Aaron A. Myers (*admitted pro hac vice*)
BARNES & THORNBURG LLP
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
Tel.: (612) 333-2111
Fax: (612) 333-6798

Attorneys for Plaintiffs
WELLS FARGO & COMPANY and WELLS
FARGO INSURANCE SERVICES USA, INC.

Dated: March 27, 2014

/s/ Benjamin K. Riley

Benjamin K. Riley (112007)
Jayne Laiprasert (256930)
BARTKO, ZANKEL, BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, California 94111

Katherine M. Basile (132518)
NOVAK DRUCE + QUIGG LLP
21771 Stevens Creek Boulevard
Cupertino, CA 95014

James M. Wagstaffe (95535)
Adrian J. Sawyer (203712)
KERR & WAGSTAFFE LLP
100 Spear Street, 18th Floor
San Francisco, CA 94105-1576

Attorneys for Defendants
ABD INSURANCE & FINANCIAL
SERVICES, INC.; KURT DE GROSZ; and
BRIAN HETHERINGTON



3/28/14

1 **ATTESTATION OF E-FILER**

2 In compliance with Local Rule 5-1(i), the undersigned ECF user filing this document,
3 hereby attests that all signatories of this document have concurred in the filing of this document.

4

5 */s/ Benjamin K. Riley*

6 Benjamin K. Riley

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28